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EXAMINER	
STACE, BRENT S	
ART UNIT	**PAPER NUMBER**
2161	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/805,706	HURST-HILLER ET AL.	
	Examiner	Art Unit	
	Brent S. Stace	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *21 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-14 and 16-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-14 and 16-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 December 2006* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Remarks

1. This communication is responsive to the Amendment filed December 21st, 2006. Claims 1-5, 7-14, and 16-18 are pending. In the Amendment filed December 21st, 2006, Claims 1, 4, 5, 8-11, 14, and 16-18 are amended, Claims 6 and 15 are canceled, and Claims 1, 5, 10, 11, 14, and 18 are independent claims. The examiner acknowledges that no new matter was introduced and the amended and new claims are supported by the specification. This action is the FINAL.

Response to Arguments

2. Applicant's arguments dated December 21st, 2006 with respect to Claims 1, 10, 11, and 18 have been considered but are moot in view of the new ground(s) of rejection.

3. As to Applicant's arguments with respect to Claims 1, 10, 11, and 18 for the prior art(s) allegedly not teaching the "submitting questions to the user regarding a performance of the search engine and receiving responses to the questions," the examiner respectfully submits that this argument is moot in view of the new ground of rejection below.

4. Applicant's arguments dated December 21st, 2006 with respect to Claims 5 and 14 have been fully considered but they are not persuasive.

5. As to Applicant's arguments with respect to Claims 5 and 14 for the prior art(s) allegedly not teaching the "determining if a snooze request specifying a time period to

suspend collection of explicit feedback data is in effect from said user, and, if not, collecting explicit feedback data from said user," the examiner respectfully disagrees. A "snooze request" in Mishelevich is the cited pause between data input collection. This pause starts a timer (the one-and-a-half-times the average pause between elements (this is the time period, which, as cited, is adjustable)). This pause is in effect for the user to respond to input data within the time frame. As cited, if the user does not enter data the input moves to a different data input location. Therefore, data collection is suspended for the current and next input location when the system pauses for user input. As for the "if not..." limitation of the claim, when the user is inputting data, the snooze request hasn't been activated and data collection is not suspended for at least the location being inputted.

6. Any other claims argued merely because of a dependency on a previously argued claim(s) in the arguments presented to the examiner, December 21st, 2006, are moot in view of the examiner's interpretation of the claims and art and are still considered rejected based on their respective rejections from prior Office action(s) (recited below).

Response to Amendment

Specification

7. In light of the applicant's respective arguments or respective amendments, the previous specification objections to the specification have been withdrawn.

Drawings

8. The drawings are still objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Fig. 1, details 182, 184, 186. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

9. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the drawings. For example, the drawings should be carefully checked to ensure that all reference numerals are described in the specification, that no one reference numeral describes two separate drawing elements, or that the specification contains no reference to numerals not in the drawings.

Claim Objections

10. Claims 3, 7, 11-13, and 16 are objected to because of the following informalities:

a. Claims 3 and 11 are still missing an "and" after the second to last limitation to denote that the last limitation follows in the claim. Accordingly, this is a grammatical error and this objection propagates downward through dependent Claims 12 and 13.

b. Claims 7 and 16 both depend from a canceled claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

11. In light of the applicant's respective arguments or respective amendments, some of the previous 35 USC § 101 rejections to the claims have been withdrawn.

12. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-18 gather data. The data is then used to evaluate the performance of the search mechanism. First, "to evaluate" is not actually evaluating. Second, evaluation is only an intended use of the data and carries no patentable weight. And, finally, evaluating is a very abstract idea that, in the claims, doesn't appear to be doing anything. As such, there is still no useful, concrete and tangible result for the claims.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 4 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

16. Claims 4 and 9 individually appear to be a system, medium, device, or possibly an apparatus dependent on the method of Claim 1 (or claim 5). These claims attempt to create a different statutory category of invention dependent on another category of invention. As such, it is unclear what category of invention the claims are attempting to claim.

Claim Rejections - 35 USC § 102

17. In light of the applicant's respective arguments or respective amendments, the previous 35 USC § 102 rejections to the claims have been withdrawn.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

20. Claims 1-4, 10-13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0107843 (Biebesheimer et al.) in view of U.S. Patent Application No. 2002/0156776 (Davallou)..

For **Claim 1**, Biebesheimer teaches: "A method...said method comprising:

- collecting user information from a user having access to said search mechanism; [Biebesheimer, paragraph [0030]]
- monitoring of said search mechanism for user behavior data regarding an interaction of said user with said search mechanism to perform a search; [Biebesheimer, paragraph [0042]]
- monitoring said search mechanism for search mechanism response data regarding said search; [Biebesheimer, paragraph [0042]]
- acquiring the context-based user feedback data describing said search..." [Biebesheimer, paragraph [0029]].

Biebesheimer discloses the above limitations but does not expressly teach: "for evaluating performance of a search mechanism based on context-based user feedback data

- ...by submitting questions to the user regarding a performance of the search engine with respect to said search and receiving responses to said questions; and
- using the context-based user feedback data to evaluate the performance of the search mechanism."

With respect to Claim 1, an analogous art, Davallou, teaches: "for evaluating performance of a search mechanism based on context-based user feedback data [Davallou, paragraph [0033]]

- ...by submitting questions to the user regarding a performance of the search engine with respect to said search and receiving responses to said questions; [Davallou, paragraph [0033]] and
- using the context-based user feedback data to evaluate the performance of the search mechanism" [Davallou, paragraph [0033]].

It would have been obvious to one of ordinary skill in the art at the time of invention having the teachings of Davallou and Biebesheimer before him/her to combine Davallou with Biebesheimer because both inventions are directed towards using and searching for information in databases that use user data.

Davallou's invention would have been expected to successfully work well with Biebesheimer's invention because both inventions use databases using user data.

Biebesheimer discloses a customer self service subsystem for classifying user contexts comprising the acquiring of context-based user feedback data describing a search. However, Biebesheimer does not expressly disclose asking questions about search performance of the database/results and receiving responses nor the explicit use of that data to evaluate performance. Davallou discloses a phonetic self-improving search engine comprising submitting and querying the user about the search results returned.

It would have been obvious to one of ordinary skill in the art at the time of invention having the teachings of Davallou and Biebesheimer before him/her to take the questions, responses, and use from Davallou and install it into the invention of Biebesheimer, thereby offering the obvious advantage of making self-improving search engine with enhanced functionality to provide better search results.

Claim 2 can be mapped to Biebesheimer (as modified by Davallou) as follows: "The method of claim 1, where said user information comprises one or more of the following:

- the speed of said user's connection to said search mechanism; [Biebesheimer, paragraph [0036]]
- the type of said user's connection to said search mechanism; [Biebesheimer, paragraph [0073]]
- a classification of said user's use of said search mechanism; [Biebesheimer, paragraph [0030] with Biebesheimer, paragraph [0073]]
- background information concerning said user; [Biebesheimer, paragraph [0030]]

or

- the language which said user is using to perform said search" [Biebesheimer, paragraph [0073] or Davallou, paragraph [0020]].

Claim 3 can be mapped to Biebesheimer (as modified by Davallou) as follows: "The method of claim 1, where said step of collecting said user information comprises:

- requesting said user information from said user; [Biebesheimer, paragraph [0030]]
- accepting responses from said user" [Biebesheimer, paragraph [0030]].

Claim 4 encompasses substantially the same scope of the invention as that of Claim 1, in addition to at least one of an operating system, a computer readable medium having stored thereon a plurality of computer-executable instructions, a co-processing device, and a computing device carrying computer executable instructions and some way(s) for performing the method steps of Claim 1. Therefore, Claim 4 is rejected for the same reasons as stated above with respect to Claim 1.

For **Claim 10**, Biebesheimer teaches: "A method...said method comprising:

- monitoring of said search mechanism for user behavior data regarding an interaction of the user having access to said search mechanism with said search mechanism to perform a search, [Biebesheimer, paragraph [0042]] said user behavior data comprising data concerning at least one member of a group comprising: requery performed by said user, [Biebesheimer, paragraph [0027]] dwell time on said results page, click time on said results page, position of result clicked, more results requested by said user, result dwell time result page size, or

result page actions; [Biebesheimer, paragraph [0029] or Davallou, paragraph [0033]]

- monitoring said search mechanism for search mechanism response data regarding said search; [Biebesheimer, paragraph [0042]]
- acquiring context-based user feedback data..." [Biebesheimer, paragraph [0029]].

Biebesheimer discloses the above limitations but does not expressly teach: "...for evaluating performance of a search mechanism based on context-based user feedback data

- ...by submitting questions to the user regarding a performance of the search engine with respect to said search and receiving responses to said questions; and
- using the context-based user feedback data to evaluate the performance of the search mechanism."

With respect to Claim 10, an analogous art, Davallou, teaches: "...for evaluating performance of a search mechanism based on context-based user feedback data [Davallou, paragraph [0033]]

- ...by submitting questions to the user regarding a performance of the search engine with respect to said search and receiving responses to said questions; [Davallou, paragraph [0033]] and
- using the context-based user feedback data to evaluate the performance of the search mechanism" [Davallou, paragraph [0033]].

It would have been obvious to one of ordinary skill in the art at the time of invention having the teachings of Davallou and Biebesheimer before him/her to combine Davallou with Biebesheimer because both inventions are directed towards using and searching for information in databases that use user data.

Davallou's invention would have been expected to successfully work well with Biebesheimer's invention because both inventions use databases using user data. Biebesheimer discloses a customer self service subsystem for classifying user contexts comprising the acquiring of context-based user feedback data describing a search. However, Biebesheimer does not expressly disclose asking questions about search performance of the database/results and receiving responses nor the explicit use of that data to evaluate performance. Davallou discloses a phonetic self-improving search engine comprising submitting and querying the user about the search results returned.

It would have been obvious to one of ordinary skill in the art at the time of invention having the teachings of Davallou and Biebesheimer before him/her to take the questions, responses, and use from Davallou and install it into the invention of Biebesheimer, thereby offering the obvious advantage of making self-improving search engine with enhanced functionality to provide better search results.

Claims 11-13 encompass substantially the same scope of the invention as that of Claims 1-3, respectfully, in addition to a system and some elements for performing the method steps of Claims 1-3, respectfully. Therefore, Claims 11-13 are rejected for the same reasons as stated above with respect to Claims 1-3, respectfully.

Claim 18 encompasses substantially the same scope of the invention as that of Claim 10, in addition to a system and some elements for performing the method steps of Claim 10. Therefore, Claim 18 is rejected for the same reasons as stated above with respect to Claim 10.

21. Claims 5, 7-9, 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,571,236 (Ruppelt) in view of U.S. Patent No. 6,434,547 (Mishelevich et al.).

For **Claim 5**, Ruppelt teaches: "A method for evaluating performance of a search mechanism based on context-based user feedback data, [Ruppelt, col. 3, lines 40-45 with Ruppelt, cols. 3-4, lines 62-7] said method comprising:

- monitoring of said search mechanism for user behavior data regarding an interaction of a user having access to said search mechanism with said search mechanism to perform a search; [Ruppelt, col.2, lines 50-56]
- monitoring said search mechanism for search mechanism response data regarding said search; [Ruppelt, col. 3, lines 35-50]
- ...acquiring context-based user feedback data describing said search, [Ruppelt, col. 4, lines 8-15] said context-based user feedback data comprising said explicit feedback data if said explicit user feedback data was collected; [Ruppelt, col. 3, lines 35-50 with Ruppelt, col. 4, lines 8-15] and

- using the context-based user feedback data to evaluate the performance of the search mechanism" [Ruppelt, col. 3, lines 40-45 with Ruppelt, cols. 3-4, lines 62-7].

Ruppelt discloses the above limitations but does not expressly teach:

- "...determining if a snooze request specifying a time period to suspend collection of explicit feedback data is in effect from said user, and, if not, collecting explicit feedback data from said user."

With respect to Claim 5, an analogous art, Mishelevich, teaches:

- "...determining if a snooze request specifying a time period to suspend collection of explicit feedback data is in effect from said user, and, if not, collecting explicit feedback data from said user" [Mishelevich, cols. 8-9, lines 62-5 with Mishelevich, cols. 10-11, lines 63-22 with Ruppelt, col. 3, lines 35-50].

It would have been obvious to one of ordinary skill in the art at the time of invention having the teachings of Mishelevich and Ruppelt before him/her to combine Mishelevich with Ruppelt because both inventions are directed towards prompting users for information.

Mishelevich's invention would have been expected to successfully work well with Ruppelt's invention because both inventions use computers for data input. Ruppelt discloses a method and apparatus for problem diagnosis and solution comprising asking questions regarding the user's search. However, Ruppelt does not expressly disclose a snooze request with a time period to suspend data collection. Mishelevich discloses a data capture and verification system comprising elements and actions

equating to "determining if a snooze request specifying a time period to suspend collection of explicit feedback data is in effect from the user, and, if not, collecting explicit feedback data from the user."

It would have been obvious to one of ordinary skill in the art at the time of invention having the teachings of Mishelevich and Ruppelt before him/her to take the pausing from different inputs and rhythm/rates from Mishelevich and install it into the invention of Ruppelt, thereby offering the obvious advantage of facilitating data entry.

Claim 7 can be mapped to Ruppelt (as modified by Mishelevich) as follows: "The method of claim 6, where said step of determining if a snooze request is in effect from said user comprises:

- determining if said user has issued a snooze request; [Mishelevich, cols. 8-9, lines 62-5 with Mishelevich, cols. 10-11, lines 63-22] and
- determining if an associated time period associated with said snooze request has elapsed" [Mishelevich, cols. 8-9, lines 62-5 with Mishelevich, cols. 10-11, lines 63-22].

Claim 8 can be mapped to Ruppelt (as modified by Mishelevich) as follows: "The method of claim 5, further comprising:

- storing target data concerning a target value for how often explicit feedback should be collected for searches; [Mishelevich, col. 11, lines 5-10] and
- allowing explicit feedback to be collected only if collecting the explicit feedback would not result in exceeding said target value for how often explicit feedback is collected" [Mishelevich, cols. 10-11, lines 63-22 with Ruppelt, col. 4, lines 10-15].

Claim 9 encompasses substantially the same scope of the invention as that of Claim 5, in addition to at least one of an operating system, a computer readable medium having stored thereon a plurality of computer-executable instructions, a co-processing device, and a computing device carrying computer executable instructions and some way(s) for performing the method steps of Claim 5. Therefore, Claim 9 is rejected for the same reasons as stated above with respect to Claim 5.

Claim 14 encompasses substantially the same scope of the invention as that of Claim 5 in addition to a system and some elements for performing the method steps of Claim 5. Therefore, Claim 14 is rejected for the same reasons as stated above with respect to Claim 5.

Claims 16 and 17 encompass substantially the same scope of the invention as that of Claims 7 and 8, respectfully, in addition to a system and some elements for performing the method steps of Claims 7 and 8, respectfully. Therefore, Claims 16 and 17 are rejected for the same reasons as stated above with respect to Claims 7 and 8, respectfully.

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent S. Stace whose telephone number is 571-272-8372 and fax number is 571-273-8372. The examiner can normally be reached on M-F 9am-5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu M. Mofiz can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brent Stace

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